

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007**

IN THE MATTER OF:

Joseph Yuknevich

**Proceeding pursuant to Section
309(a) of the Clean Water Act,
33 U.S.C. § 1319(a).**

ORDER-ON-CONSENT

CWA-02-2021-3501

I. STATUTORY AUTHORITY

The following Findings are made and Consent Order (“Order”) issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by the Clean Water Act (“CWA” or “the Act”), as amended, 33 U.S.C. § 1251 et seq., and in particular Section 309(a) of the Act, 33 U.S.C. § 1319(a). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly re-delegated to the undersigned Director of the Enforcement and Compliance Division of EPA, Region 2.

II. STIPULATIONS AND FINDINGS

1. Joseph Yuknevich, hereinafter “Respondent”, is the owner of tax parcel 107.3-2-14.200, consisting of 5.2 acres located at 2253 New York Route 300, Town of Shawangunk, Ulster County, New York (“the Property”) (See “Exhibit A”).
2. Respondent is a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. §1362(5).
3. The Property consists of an access road/driveway, a one-family residence with accessory structures, an in-stream pond, and a parking area with an outbuilding used for business purposes.
4. The Property contains both wetlands and uplands.

5. Beginning in November 2015, Respondent discharged fill material into an unnamed tributary to the Wallkill River and its adjacent wetlands, which EPA has determined are waters of the United States, on the Property.
6. Fill material was illegally discharged to approximately 0.2 acre of wetland to create upland for the construction of residential accessory structures (i.e., patio, pool, greenhouse), and 100 linear feet of the unnamed tributary to create an in-stream pond, as depicted in Exhibit B.
7. The wetlands abut, and are therefore adjacent to, the unnamed tributary that flows to the Wallkill River.
8. The Wallkill River is a traditional navigable water.
9. The stream and wetlands that comprise the areas of discharge are waters of the United States, which came under the jurisdiction of EPA and the Corps effective September 1, 1976. The Act's jurisdiction encompasses "navigable waters" which are defined as "waters of the United States" in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
10. The fill material consisted of earthen material and was discharged into the stream and wetlands using mechanized construction equipment.
11. The mechanized construction equipment utilized to accomplish the discharge is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
12. The fill material that was discharged constitutes a "pollutant" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).
13. The discharge of fill material into waters of the United States constitutes a "discharge of pollutants" as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).
14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 302, 306, 307, 318, 402 and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, 1344.
15. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army to authorize discharges of dredged and fill material into navigable waters of the United States.
16. The discharge of pollutants, consisting of dredged and fill material, into navigable waters of the United States without authorization from the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344, from a point source, is unlawful under Section 301(a) of the Act, 33 U.S.C. § 1311(a).
17. The Secretary of the Army has not issued authorization pursuant to Section 404 of the Act for the discharge of fill material at the Property.

18. Based on the Findings set forth above, EPA finds Respondent to be in violation of Section 301 of the Act, 33 U.S.C. § 1311, for the discharge of pollutants consisting of earthen fill into waters of the United States from point sources without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344.
19. Each day that the subject discharge remains unauthorized by the Secretary of the Army pursuant to Section 404 of the Act, 33 U.S.C. § 1344, constitutes an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.

III. CONSENT

1. Respondent admits the factual violations asserted in this Order, admits that EPA has authority under Section 309 of the Act, 33 U.S.C. § 1319, to issue this Order, and agrees to be bound by this Order.
2. In consideration of the Stipulations and Findings, the seriousness of the described violations, Respondent's good faith efforts to comply with the Act, and the consent of the Respondent, and pursuant to the provisions of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA has determined that compliance with the following requirements is appropriate:

IV. ORDERED PROVISIONS

1. Respondent shall cause no new discharges of dredged or fill material into waters of the United States at the Property, except as authorized by a valid permit issued by the Corps of Engineers pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.
2. For the purposes of this Order, the extent of unauthorized fill material at the Property is approximately 100 linear feet of stream ("Unauthorized Stream Fill") and 0.2 acre of wetlands ("Unauthorized Wetland Fill"). The geographic extent of the fill material is depicted in Exhibit B.
3. Respondent shall undertake measures to come into prompt compliance with Section 404 of the CWA, 33 U.S.C. § 1344, with respect to the alleged unauthorized discharges of fill material at the Property.
4. For the purposes of meeting the requirements of this Order regarding the Unauthorized Wetland Fill, Respondent shall identify upland areas on the Property that are suitable for wetland restoration, via re-establishment, or wetland creation ("Wetland Mitigation Areas"). The Wetland Mitigation Areas shall be of sufficient acreage, location, and landscape position that they provide environmental benefits equal to or greater than the Unauthorized Wetland Fill to be left in place.

5. Within 60 days of the execution of this Order, a proposal to re-establish or create wetlands on the Property (“Wetland Mitigation Plan”) shall be developed and submitted to EPA for review and approval. The Wetland Mitigation Plan shall provide a detailed description of the proposed wetland restoration, via re-establishment, or wetland creation work including location maps, drawings, a construction schedule, planting/seeding details, performance standards, and post-construction monitoring.
6. Within 15 days of receipt of the Wetland Mitigation Plan, EPA shall inform the Respondent of its adequacy of the plan, or if revisions need to be made to meet the requirements of Paragraph 5, above.
7. Within 15 days of Respondent’s receipt of any EPA request for revisions of the Wetland Mitigation Plan required by Paragraph 5, above, Respondent shall address and correct all noted deficiencies and resubmit the Wetland Mitigation Plan for EPA approval.
8. For the purposes of meeting the requirements of this Order regarding the Unauthorized Stream Fill, a plan to restore the rerouted stream to its pre-disturbance course (“Stream Restoration Plan”) shall be submitted to EPA for review and approval within 30 days of the execution of this Order. The Stream Restoration Plan shall provide a detailed description of the proposed stream restoration work including location maps, cross-sections, a construction schedule, performance standards, and post-construction monitoring.
9. Within 15 days of receipt of the Stream Restoration Plan, EPA shall inform the Respondent of the adequacy of the plan, or if revisions need to be made to meet the requirements of Paragraph 8, above.
10. Within 15 days of Respondent’s receipt of any EPA request for revisions of the Stream Restoration Plan required by Paragraph 9, above, Respondent shall address and correct all noted deficiencies and resubmit the Stream Restoration Plan for EPA approval.
11. Upon receipt of EPA’s written approvals of the Wetland Mitigation Plan and the Stream Restoration Plan, Respondent shall implement such plans in accordance with its terms within 120 days of the date of execution of this Order. All work described in the plans shall be completed within 270 days of the date of execution of this Order.
12. EPA may inspect the Property periodically to assess compliance with this Order and to evaluate the degree of success of plan implementation until such time as EPA deems it fully successful. Success shall be defined as attaining the performance standards set forth in the approved Wetland Mitigation Plan and Stream Restoration Plan.
13. Respondent is responsible for complying with all local, state, and Federal laws during implementation of the approved plans.
14. If Respondent cannot comply with any of the deadlines or requirements in this Order, Respondent shall, upon learning of the delay or cause for a delay, immediately notify

Stephanie Andreescu, Wetlands Inspector, via email at andreescu.stephanie@epa.gov or telephone at (212) 637-3818.

15. Any notification(s) made pursuant to Paragraph 14, above, shall include the anticipated length of the delay, the cause of the delay, the measures taken by Respondent to prevent or minimize the delay, and a timetable by which Respondent intends to implement these measures. If EPA and Respondent agree that the delay is caused by a force majeure event resulting in circumstances beyond the reasonable control of Respondent, such as an Act of God or third parties not under the direction of Respondent, or the obtaining of necessary permits or approvals where Respondent made all reasonable efforts to timely obtain said permits or approvals, the time for performance hereunder may be extended at the sole discretion of EPA for a reasonable period.
16. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Order that the force majeure event has impacted will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.
17. Failure to comply with the terms of this Order may result in further enforcement pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. EPA may also seek additional and other relief against Respondent for failure to achieve the requirements of this Order.
18. If Respondent transfers ownership of all or any portion of the Property, Respondent shall ensure the legal means for its compliance with this Order, including the restoration and monitoring requirements.

V. EFFECT OF SETTLEMENT

1. EPA reserves all legal and equitable remedies available to enforce the provisions of this Order.
2. This Order is an agreement between Respondent and EPA to resolve the injunctive relief issues related to the violations of Section 301 of the Act, 33 U.S.C. § 1311, set forth in the Stipulations and Findings, above. Any failure on the part of Respondent to comply with the provisions of this Order may, after written notice by EPA to Respondent, void this agreement and result in further enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319, against Respondent for the subject violations.

3. This Order is not a permit under the CWA for any discharges of fill that remain on the Property. This Order is a decision by EPA that the injunctive relief measures described in this Order are adequate to resolve issues of environmental harm, including the loss of wetland functions, at the Property in a manner that most expeditiously achieves compliance with the Act.


VI. GENERAL PROVISIONS

1. All written information required to be submitted to EPA pursuant to this Order shall be sent via e-mail to Stephanie Andreescu, Wetlands Inspector, at andreescu.stephanie@epa.gov, and Marco Finocchiaro, Chief of the Wetlands Protections Section, at finocchiaro.marco@epa.gov.
2. Any questions concerning this Order should be directed to Ms. Andreescu at the contact information provided above. Legal questions regarding this matter should be directed to Ms. Lauren Fischer, Assistant Regional Counsel, at fischer.lauren@epa.gov or (212) 637-3231.
4. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
5. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
6. The provisions of this Order shall be binding upon Respondent, and its agents, servants, employees, successors or assigns and all successors in interest in the Property.

VII. EFFECTIVE DATE

This Order shall become effective upon the date of execution by the Director, Environmental and Compliance Division of EPA, Region 2.

FOR RESPONDENT:



Joseph Yuknevich

11/18/20
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Kate Anderson

Dore LaPosta, Director
Enforcement and Compliance Division
U.S. Environmental Protection Agency,
Region 2

12/03/58
Date

Exhibit A

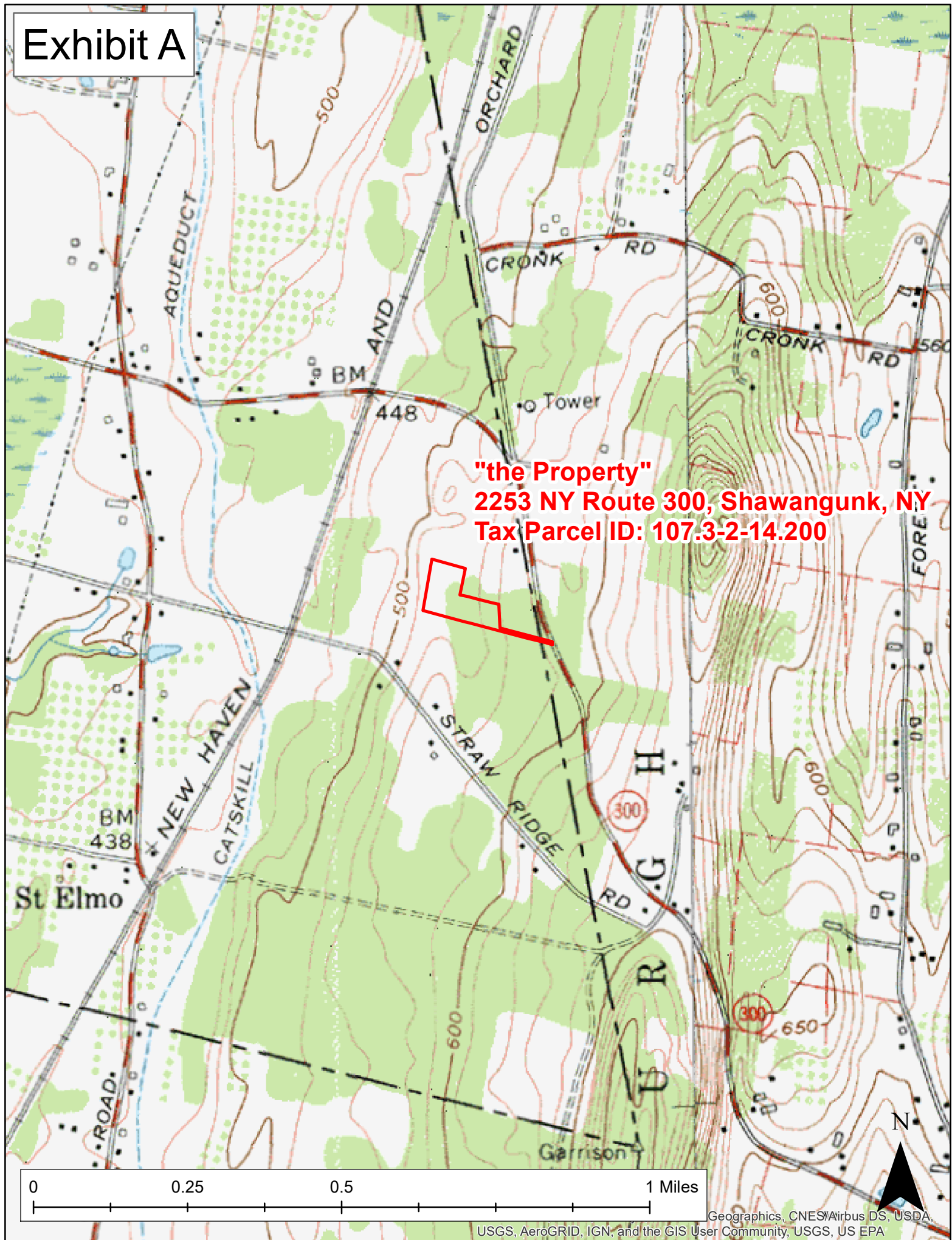





Exhibit B

-  Unauthorized Wetland Fill (0.2 acre)
-  Unauthorized Stream Fill (100 lf)
-  Previously Delineated Wetland

